Comments from the Fuel Cell and Hydrogen Energy Association
Bipartisan Tax Reform

April 15, 2015

Background

The Fuel Cell and Hydrogen Energy Association (FCHEA) appreciates the opportunity to provide input to the Senate Finance Committee Tax Reform Working Groups.

Our association is dedicated to the commercialization of fuel cells and hydrogen energy technologies, which are a unique set of clean, efficient, and resilient energy technologies being placed in service for stationary power generation, backup power, material handling equipment, and on-road vehicles.

This diversity of applications for fuels cells requires that we submit comments to the Working Groups overseeing business taxes, individual taxes, and community development and infrastructure.

Introduction

We applaud the Senate Finance Committee for its leadership and work on comprehensive tax reform that stimulates innovation, economic growth, and improves competitiveness.

Fuel cells are in the early commercialization phase and the incentives enacted to bring these products to market are just starting to have the desired impact. As the Senate Finance Committee considers tax reform, we urge focusing on modifications to strengthen the effectiveness of these incentives, rather than more significant restructuring.

Scope of Input

The first segment of our comments will deal with fuel cells for stationary power, backup power, and material handling equipment, which benefit from the Investment Tax Credit (ITC) (**section 48**). While these credits expire at the end of 2016, uncertainties around tax reform, or extenders, are already having a negative impact on our industry due to the long lead time needed for project negotiation and financing. And unlike the production tax credit, which can still monetize expired credits thanks to "commence construction" rules, the ITC only applies once the unit is "placed in service."

The second segment will consist of incentives for fuel cell electric vehicles (FCEVs), accompanying fueling infrastructure, and fuel. These incentives are codified under the Alternative Motor Vehicle Credit (**section 30 B**), the Alternative Fuel Vehicle Refueling Property Credit (**section 30 C**) and the Hydrogen Fuel Excise Tax Credit (**section 6426**). These credits expired at the end of 2014.

In addition to presenting tax reform proposals, we also present ideas for an extenders package as a bridge to tax reform.

Stationary and Material Handling Equipment (Section 48)

Importance of the investment tax credit

In general, fuel cells for stationary power, backup power, and material handling equipment benefit from the investment tax credit (ITC) – a policy that has proven to be invaluable in establishing early markets and leveraging billions of dollars in private investment for worthwhile technologies.

For fuel cells, the ITC is just starting to have its desired impact, and the industry is seeing an uptake in business orders.

Current US market

In the United States, there is nearly 200 MW of stationary fuel cell capacity for primary and back up electricity generation. Compared to other alternative energy technologies this represents approximately **.3% of installed wind**[1] and **1.2% of installed photovoltaic (PV) solar** in the United States[2]. Major Fortune 500 Companies like Walmart, Apple, EBay, Microsoft, Sysco are incorporating fuel cells into their operations as way to supply resilient power for their operations and cost-effective management of their warehouse operations.

Reform

The ITC provides incentive for fuel cells that range in size from a ½ kW, encompassing small backup power and material handling equipment (forklifts), to large stationary that produces multi-megawatt output. An ideal revision of the ITC would provide the following:

- Maintain the existing structure of the ITC set at the current 30%, capped at $3,000/kW.
- Provide ramp down of the credit based on market-penetration to establish certainty for the market.

These reforms would ensure that the ITC to supports the development and commercialization of fuel cells by offsetting some of the cost to customers of early adoption. They would also continue to encourage investments in advanced energy innovation, business growth, and job creation. Finally the incentives would ramp down as the technology becomes established.

Extenders

In lieu of underlying changes to the tax code, we urge Congress to extend the Section 48 ITC with simple modifications that includes the following:

- A five year extension of the current incentives.
- Substitution of 'commence construction' for the current 'placed in service' standard. This provides additional certainty for long lead-time projects, and parity with the production tax credit.

An ITC extension would provide a necessary bridge to tax reform, avoiding serious market disruption and allowing the continued development of still nascent technologies.

[1] AWEA Fourth Quarter 2013 Market Report http://awea.files.cms-plus.com/FileDownloads/pdfs/AWEA%204Q2013%20Wind%20Energy%20Industry%20Market%20Report_Public%20Version.pdf

[2] SEIA Report – US Solar Market Insight - http://www.seia.org/research-resources/us-solar-market-insight

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Vehicle and Infrastructure Credits (Sections 30 B, 30 C, and 6426)

Importance of Vehicle and Infrastructure Credits and Current Market

Other alternative vehicle platforms have benefitted from incentives in the tax code. Now, with nearly every major automobile manufacturer developing FCEVs, a revision of the expired provisions is warranted.

By 2016, three companies will have vehicles available for commercial sale in the United States. And we expect this trend to gradually continue as consumers look for zero-emission vehicles that completely replicate today's driving experience.

To date, there are less than 200 FCEVs on America's roads, and less than 20 fueling stations in the United States. Comparatively, there are more than 100,000[3] battery electric vehicles (BEVs) in the United States.

Reform

Vehicles - Equitable treatment should be extended to all zero emission electric vehicles. While FCEVs are zero emission electric vehicles, credits for Battery Electric Vehicles (BEVs)[4] sunset based on market penetration for individual manufacturers selling more than 200,000 vehicles.

Fueling and Infrastructure - Section 30 C of the tax code provided a tax credit for fueling infrastructure. The credit for hydrogen fueling infrastructure covered 30% of cost of the station up to $30,000 and was limited to infrastructure for on-road vehicles. Additionally, the excise credit in Section 6426 only incentivized liquid hydrogen for use onboard a vehicle – a technology option that is no longer being considered by automobile manufacturers[5].

Modification of these sections of the tax code would ideally consist of the following:

- Section 30 B – Provide electric vehicle parity by modifying section to expire once at least 200,000 qualifying vehicles have been sold, as in Section 30 D.
- Section 30 C - Raise the infrastructure dollar cap to $200,000 – a figure established by the American Recovery and Reinvestment Act (ARRA) – base expiration on market penetration, and allow infrastructure for "industrial vehicles" to qualify.
- Section 6426 – Extend the credit and modify language to include sale of gaseous hydrogen for use onboard a vehicle, which is the only technology pathway currently being considered by automobile manufacturers and allow 'industrial vehicle' refuelings to qualify.

[3] From EDTA Electric Drive Sales http://electricdrive.org/ht/d/sp/i/20952/pid/20952

[4] Plug-In Electric Drive Vehicle Credit (IRC 30D) http://www.irs.gov/Businesses/Plug-In-Electric-Vehicle-Credit-IRC-30-and-IRC-30D

[5] In spite of this, the CBO has assigned a cost to this provision even though the impact to revenue should be zero. This provides justification for a technical correction to incentivize the actual fuel used – gaseous hydrogen.

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Extenders

In lieu of underlying changes to the tax code, our industry asks Congress for extension with simple changes which include the following:

- Section 30 B – Extend the incentives for at least five years.
- Section 30 C – Extend the incentive for at least five years and allow all hydrogen infrastructure, allowing "industrial vehicles" to qualify.
- Section 6426 – Modify language to include sale of gaseous hydrogen for use onboard a vehicle, which is the only pathway being considered by automobile manufacturers and allow 'industrial vehicle' refuelings to qualify.

Closing

We appreciate the significant task being undertaken to reform our tax code and provide a fair and simpler system for all taxpayers. The incentives we have highlighted are important to our industry. As the Working Groups consider tax reform, we urge focusing on modest modifications to strengthen the effectiveness of these incentives.

Thank you for your consideration.